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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/928,272	09/12/1997	MICHAEL J. ISKRA	P-3818	9434

7590 05/07/2007
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EXAMINER

MITCHELL, TEENA KAY

ART UNIT	PAPER NUMBER
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3771

MAIL DATE	DELIVERY MODE
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05/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 08/928,272	Applicant(s) ISKRA, MICHAEL J.	
	Examiner Teena Mitchell	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Allowable Subject Matter

Applicant is advised that the Notice of Allowance mailed is vacated. If the issue fee has already been paid, applicant may request a refund or request that the fee be credited to a deposit account. However, applicant may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicant may request that the previously submitted issue fee be applied. If abandoned, applicant may request refund or credit to a specified Deposit Account.

The indicated allowability of claims 1 and 5-9 is withdrawn in view of the newly discovered reference(s) to Arlman 3,918,909. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

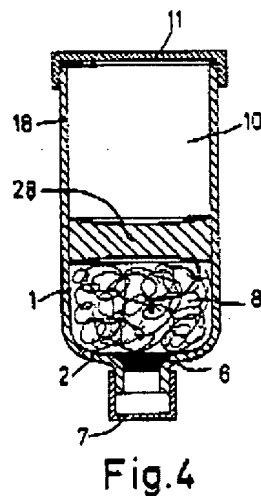
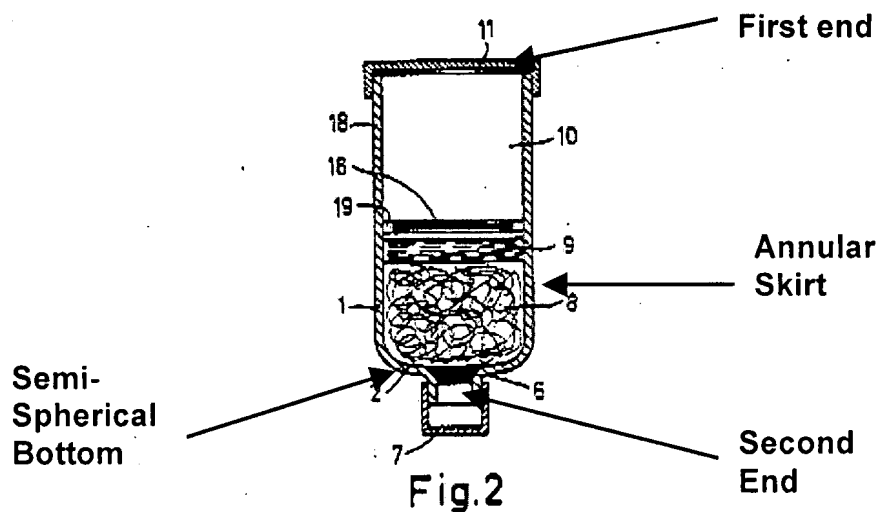
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Arlman 3,918,909.

Regarding claim 1, Arlman discloses a one-piece collection container assembly (Figs. 1-5) comprising: an elongate tubular housing having opposed first and second ends (Figs 2, 4); and a solid partition positioned within said housing between said first

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and second ends (16, 28); said housing defining a volume for specimen collection therein between said first end and said partition; said second end comprising a bottom end below said partition, said bottom end comprising an annular skirt and a semi-spherical bottom, wherein said semi-spherical bottom comprises an opening therein (not illustration of Figs. 2, 4 below).



Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arlman 3,918,909.

With respect to claim 5, Arlman does not disclose the partition being arcuate shape with a partially rounded bottom portion, however applicant in Figs. 1 and 2 (Prior Art) teaches that such arcuate shape and rounded bottom portion is known in the art and therefore it would have been an obvious design consideration for one of ordinary skill in the art to have the partition of Arlman with an arcuate shape and rounded bottom portion, as such is known in the art based upon Figs. 1 and 2 of applicant's instant application.

With respect to claim 6, note rejection of claim 5 above.

With respect to claim 7, Arlman discloses the claimed invention except for the housing being a thermoplastic polymer. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the housing of a thermoplastic polymer, since it has been held to be within the general skill of a worker in the art to

select a known material on its suitability for the intended use as a matter of design consideration. In re Leshin, 227 F.2d 197, 125 USPQ 416.

With respect to claim 8, note rejection of claim 7 above.

With respect to claim 9, Arlman fails to disclose the claimed dimensions of the housing as set forth by the claim. However, the Applicant has fails to disclose why those particular dimensions are advantageous or what particular problem those specific dimensions solve. Furthermore, depending on the intended use (e.g., how much of a sample is to be collected, the dimensions of the housing will vary and such dimensions may also be derived through routine observation and experimentation and therefore, it would have been obvious to one of ordinary skill in the art to make the housing of any desired dimensions to fit the needs of the user.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Figures 1 and 2 of the instant application in view of Arlman (3,918,909).

With respect to claim 1, Figures 1 and 2 of the instant application disclose a one piece collection container assembly comprising: an elongate tubular housing having opposed first and second ends; and a solid partition (20) positioned within said housing between said first and second ends (Figs. 1, 2); and said housing defining a volume for specimen collection therein between said first end and said partition (figs. 1, 2); said second end comprising a bottom end below said partition (30), said bottom end comprising an annular skirt (28) and an the bottom comprises an opening therein. The difference between Figures 1 and 2 of the instant application is the semi-spherical shaped bottom. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have a semi-spherical bottom as taught by Arlman in order to round off the bottom end.

With respect to claim 5, Figures 1 and 2 (Prior Art) of the instant application disclose the partition being arcuate in shape and Arlman teaches at least a partially rounded bottom portion (note rejection of claim 1 above).

With respect to claim 6, Figures 1 and 2 of the instant application disclose wherein the partition is conical in shape.

With respect to claim 7, Figures 1 and 2 of the instant application in view of Arlman discloses the claimed invention except for the housing being a thermoplastic polymer. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the housing of a thermoplastic polymer, since it has been held to be within the general skill of a worker in the art to select a known material on its

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suitability for the intended use as a matter of design consideration. In re Leshin, 227 F.2d 197, 125 USPQ 416.

With respect to claim 8, note rejection of claim 7 above.

With respect to claim 9, Figures 1 and 2 of the instant application in view of Arlman fails to disclose the claimed dimensions of the housing as set forth by the claim. However, the Applicant has fails to disclose why those particular dimensions are advantageous or what particular problem those specific dimensions solve. Furthermore, depending on the intended use (e.g., how much of a sample is to be collected, the dimensions of the housing will vary and such dimensions may also be derived through routine observation and experimentation and therefore, it would have been obvious to one of ordinary skill in the art to make the housing of any desired dimensions to fit the needs of the user.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of art is cited to show collection containers: 5,271,852; 3,931,010; 5,879,635; 4,729,875.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (571) 272-4798. The examiner can normally be reached on Monday-Friday however the examiner is on a flexible schedule.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Teena Mitchell
Primary Examiner
Art Unit 3771
April 25, 2007

TKM